IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH APRIL 2007/14TH CHAITHRA 1930

Crl.MC.No. 562 of 2007()

CC.818/1995 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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PETITIONER: ACCUSED:

K.P. GEORGE, S/O.PAULOSE,
KARAKKATTU HOUSE, MORAKKALA,
KUMARAPURAM P.O., KUNNATHUNADU.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: COMPLAINANT & STATE:

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1. LAL JOHN, MOOLAYIL VEEDU,
PERINGALA KARA, KUNNATHUNADU VILLAGE.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.562 of 2007

Dated this the 4th day of April, 2007

ORDER

Freedom and liberty of the individual are the priceless possessions of any citizen under our Constitution. The polity values that right and the constitution zealously recognises and protect that right. Courts are invested with the duty and the responsibility to protect and enforce such rights. The polity looks up to the courts to protect such rights of the individual. Protection of such rights is certainly not the concern of the individual alone, it is the duty of the system to protect such rights of the individual.

2. Articles 32 and 226 of the Constitution oblige the superior courts to protect and enforce such rights of freedom and liberty. But certainly the subordinate courts must also be zealously cautious and must enthusiastically act for the protection of such rights. The sad tale of events in this case does really create apprehensions in the mind of the Court about the commitment of the learned Magistrate to such lofty ideals and constitutional compulsions the facts and circumstances. Issue of a non bailable warrant for execution of a sentence which the accused has already served, causes shudders in my mind about the role played by the judicial officer in the protection of such rights.

3. The accused has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I Act. He had come before this Court in revision. The verdict of guilty and conviction were upheld. Another Bench of this Court directed that if an amount of Rs.50,000/- were paid within three months, the sentence awarded by the court below shall stand modified. In default of payment of the said amount as directed, the benefit of the order passed in revision will not be available to the revision petitioner, it was held. The petitioner could not pay the amount of Rs.50,000/- within three months as directed by this Court in revision. He hence became liable to undergo the sentence which was imposed on him prior to the revision petition.

4. After getting the order in revision, the learned Magistrate proceeded to issue a non bailable warrant to secure the presence of the accused. The accused appeared before the learned Magistrate. The accused pointed out to the learned Magistrate that he had already undergone the entire sentence which he is liable to undergo. He made those submissions before the learned Magistrate and it is further submitted that a copy of the certificate issued by the Superintendent of Central Prison to confirm this fact was also produced by him before the Magistrate.

5. But unfortunately, the learned Magistrate overruling the objection raised by the petitioner, issued non bailable warrant to arrest the petitioner to facilitate execution of the sentence imposed on him. The petitioner wailed before the learned Magistrate that he had already undergone the sentence, but that plea was not taken into reckoning and the non bailable warrant was issued against the petitioner.

6. In desperation, the petitioner came to this Court. The petitioner contended that he cannot be compelled to undergo the sentence which he has already undergone. Interim directions were issued by this Court and remarks of the learned Magistrate were called for. The learned Magistrate has now reported that on verification of the records in detail, the learned Magistrate is now satisfied at present that the petitioner need not undergo any further sentence.

7. The petitioner has unnecessarily been compelled to come to this Court with this Crl.M.C. He having already undergone the sentence, there was absolutely no necessity to have compelled him to resort to that course. It was certainly the duty of the learned Magistrate, before issuing the warrant of arrest (especially when the petitioner had appeared before the learned Magistrate and raised the

contention) to satisfy himself that the sentence has not been executed and deserves to be executed. Carelessly and unjustifiably warrant of arrest has been issued against the petitioner. I frown upon the conduct of the learned Magistrate. The alert concern which the courts must show to the liberty and freedom of an individual unfortunately appears to have been not shown by the learned Magistrate in this case.

8. In view of the subsequent stand taken by the learned Magistrate, no directions need be issued in this Crl.M.C. This Crl.M.C is, closed with the above observations, the petitioner having already succeeded in getting his grievance redressed.

9. Communicate copy of the order personally to the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-